



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92987; File No. SR-BX-2021-038]

### **Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Incorporate BX Options 4 Rules By Reference to Nasdaq ISE, LLC Options 4 Rules**

September 15, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 3, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to incorporate the BX Options 4 Rules by reference to Nasdaq ISE, LLC (“ISE”) Options 4 Rules.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The BX Options 4 Listing Rules provide for the options that may be listed and traded on BX. The Exchange proposes to incorporate the BX Options 4 Rules by reference to Nasdaq ISE, LLC (“ISE”) Options 4 Rules.

Currently, the BX Options 4 Rules are very similar to the ISE Options 4 Rules. The differences between the BX and ISE Options 4 Rules are non-substantive technical differences.<sup>3</sup>

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<sup>3</sup> BX Options 4, Section 2 has an extra “as”. BX Options 4, Section 3(a)(1) contains a “The” instead of “the.” BX Options 4, Section 3(b) uses the term foregoing” as compared to “forgoing” on ISE. BX Options 4, Section 3(h) defines the term “NMS stock” whereas ISE defines the term “NMS.” BX Options 4, Section 3(k)(1)(B) has an extra “this.” The term “such” within BX Options 4, Section 4(f)(5) is lowercase. BX Options 4, Section 5(a) has an extra “by the Exchange.” BX Options 4, Section 5(b) has a “the” and ISE Options 4, Section 5(b) has a “that.” Options 4, Section 5(e) has a lowercase “rule” and unlike the same rule in ISE does not have the registered trademarks. BX Supplementary .01(a) to Options 4, Section 5 uses “\$50” instead of “\$50.00,” has the term “option” instead of “options,” spells out “one hundred fifty” and incorrectly uses the term “LEAPS” instead of “LEAPs.” BX Supplementary .01(b) to Options 4, Section 5 has the terms “security” instead of “stock” and “the” instead of “its.” BX Supplementary .01(d) to Options 4, Section 5 uses the term “Strike Program” instead of “Strike Price Program,” uses an extra “the”; and phrases the last paragraph as, “Notwithstanding the above delisting policy, the Exchange may grant member requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the \$1 Strike Program that are eligible for delisting.” The last paragraph of ISE Supplementary .01(d) to Options 4, Section 5 states, “Notwithstanding the above delisting policy, Member requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the \$1 Strike Price Interval Program that are eligible for delisting may be granted.” These differences are non-substantive. BX Supplementary .02(d) to Options 4, Section 5 has the term “section” instead of “Rule.” BX Supplementary .03(e) to Options 4, Section 5 has rule in lowercase. BX Options 4, Section 6(a) uses a different phrase than ISE Options 4, Section 6(a), “Select provisions of the OLPP” versus “The provisions set forth in this Rule.” This aforementioned difference is non-substantive. BX Options 4, Section 6(b)(3) uses the term “options” instead of “option.” BX Options 4, Section 6(b)(ii)(1) uses the term “options” instead of “option,” the term “Strike Program” instead of “Strike Price Interval Program” and, “rules” instead of “Rules.” BX Options 4, Section 9 uses the term “Fund Shares” instead of “Exchange-Traded Fund Shares.”

Other changes are non-substantive word choice differences.<sup>4</sup> Finally, certain rules utilize the phrase “this Rule” instead of a citation.<sup>5</sup> Of note, BX Options 4, Section 3(h) does not list reverse repurchase agreements in the defined term “Financial Instruments”. The Exchange proposes to include “reverse repurchase agreements” within the list of securities deemed appropriate for options trading on BX in order that the Exchange may list the same products as ISE may list today. Also, BX Options 4, Section 8(a) should include the words “and continuity.” BX’s continuity rules utilize the LEAP term. ISE has this rule text within its Options 4, Section 8(a).

The Exchange proposes to incorporate by reference the BX Options 4 Rules to ISE Options 4 Rules. To that end, BX proposes to replace the current BX Options 4 Rules with the following rule text:

The rules contained in Nasdaq ISE Options 4, as such rules may be in effect from time to time (the “Options 4 Rules”), are hereby incorporated by reference into this BX Options 4, and are thus BX Rules and thereby applicable to BX Participants and associated persons. BX Participants shall comply with the Options 4 Rules as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Options 4 Rules shall be read to refer to the BX related meaning of such term. Solely by way of example,

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<sup>4</sup> BX Options 4, Section 4(b)(5) should cite to “Options 4, Section 3(c)” instead of “Options 4, Section 3.” In addition, BX Options 4, Section 4(b)(5) has two stray commas. BX Options 4, Section 4(f) has an extra “in”. BX Options 4, Section 4(g)(2) has an extra “of Options 4” and two stray commas. BX Options 4, Section 5(d) incorrectly cites to Section 3(i) instead of Section 3(h). BX Options 4, Section 6(b) incorrectly cites to Section 3(i) instead of Section 3(h). BX Options 4, Section 6(b)(i) incorrectly cites to Supplementary Material .03(d) instead of Supplementary Material .02(d). This paragraph also uses the term “options” instead of “option.” Options 3, Section 6(b)(ii) incorrectly cites to subparagraph (a) instead of subparagraph (i).

<sup>5</sup> See BX Options 4, Section 3(c)(2). BX utilizes citations to Options 4, Section 3(b)(1) and Options 4, Section 3(b)(2) instead of simply citing to “this Rules” as is the case with ISE Options 4, Section 3(c)(2). Other examples include BX Options 4, Section 3(c)(3) which cites to Options 4, Section 3(b)(4), BX Options 4, Section 3(c)(4)(B)(ii) which cites to Options 4, Section 3(b)(5)(i).

and not in limitation or in exhaustion: the defined term “Exchange” in the Options 4 Rules shall be read to refer to BX; the defined term “Rule” in the Options 4 Rules shall be read to refer to the BX Rule; the defined terms “Competitive Market Maker” and “Market Maker” in the Options 4 Rules shall be read to refer to the BX Market Maker; the defined term “Primary Market Maker” in the Options 4 Rules shall be read to refer to the BX Lead Market Maker; and the defined terms “Electronic Access Member,” “EAM,” or “Member” in the Options 4 Rules shall be read to refer to the BX Participant.

This rule text will account for differences that may exist in the usage of terms as between BX and ISE. The proposed rule text list instances in which cross references in the ISE Options 4 Rules to BX Options 4 Rules shall be read to refer instead to the Exchange Rules, and references to ISE terms (whether or not defined) shall be read to refer to the Exchange-related meanings of those terms. For instance, references to defined terms “Exchange” or “ISE” shall be read to refer to ISE.

The Exchange proposes to delete in their entirety the BX Options 4 Rules and incorporate by reference the ISE Options 4 Rules.<sup>6</sup> Today, the rules of Nasdaq GEMX, LLC and Nasdaq MRX, LLC are incorporated by reference to the rules of ISE. The Exchange will also separately file to incorporate the Options 4 Rules of The Nasdaq Options Market LLC and Nasdaq Phlx LLC to the ISE Options 4 Rules, respectively, to ISE. The Exchange believes that harmonizing the Options 4 Rules across its 6 Nasdaq Affiliated Options Exchanges will assist the Exchange in listing options across its affiliated markets. Also, incorporating by reference the ISE Options 4 Rules into the Exchange’s rulebook will organize those listing rules in a more logical order,

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<sup>6</sup> The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to BX Options 4 Rules to the extent such rules are affected solely by virtue of a change to ISE Options 4 Rules. The Exchange’s proposed rule change will not become effective unless and until the Commission grants this exemption request.

thereby eliminating unnecessary complexity in the listing process and otherwise streamlining the Exchange's existing listing rules and their associated procedures.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange believes that its proposal to delete its existing listing rules and incorporate by reference the ISE Options 4 Rules will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler. Also, the proposal is just and equitable because it will render the Exchange's listing rules easier for Participants to read and understand.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposed changes to incorporate BX's Options 4 Rules to ISE's Options 4 Rules will have any competitive impact on BX's listing rules, to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its listing rules, the Exchange's listing process will be clear. The proposed changes will apply equally to all market participants.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-038 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2021-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2021-038 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).